REMARKS

This is responsive to the Non-Final Office Action mailed May 5, 2004. In that Office Action, the Examiner objected to claims 13 and 19 because of minor informalities. Claims 1-5, 10-17, and 19-22 were rejected under the judicially-created Doctrine of Obviousness-Type Double Patenting as being unpatentable over claims 1-29 Lentz et al., U.S. Patent No. 6,438,971 ("Lentz"). Claims 6-9, 18, and 23 were rejected under the judicially-created Doctrine of Obviousness-Type Double Patenting as being unpatentable over claims 1-29 of Lentz in view of Ben-Aissa et al., U.S. Patent No. 5,558,274 ("Ben-Aissa"). Claims 1-5, 10-17, and 19-22 were rejected under 35 U.S.C. § 103(a) as being obvious over Lentz. Claims 6-9, 18, and 23 were rejected under 35 U.S.C. § 103(a) as being obvious of Lentz in view of Ben-Aissa.

With this Response, claims 1-23 remain pending in the application and are presented for reconsideration and allowance.

Examiner Objections to Claims 13 and 19

The Examiner objected to claims 13 and 19 on the basis that claims 13 and 19 "both include the same features and the preamble is for intended use only." Office Action (05/05/2004), page 2.

It is believed that the Examiner's statement that "the preamble is for intended use only" is untenable with the Examiner's basis for rejection, i.e., that "both claims include the same features." In particular, if the preamble is for "intended use only" then claim 19 requires "an ultraviolet lamp positionable within a duct" as a structural limitation within the body of the claim, whereas claim 13 would refer only to an intended use including, "an ultraviolet lamp positioned to treat air within a duct." In other words, under the Examiner's reasoning, one would be structurally limiting while the other would not. Furthermore, "an ultraviolet lamp positionable within a duct" and "an ultraviolet lamp positioned to treat air within a duct" incorporate distinct limitations when both are considered as structural limitations. In addition,

claim 13 claims "a control system," whereas claim 19 claims an "ultraviolet air treatment system," thus dictating that the two claims have different scope (M.P.E.P. §706.03(k)).

Accordingly, withdrawal of the Examiner's objection to claims 13 and 19 is respectfully requested.

Double Patenting and 35 U.S.C. § 103 Rejections

The Examiner rejected claims 1-5, 10-17, and 19-22 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of Lentz. The Examiner also rejected claims 6-9, 18, and 23 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of Lentz in view of Ben-Aissa. With this Response, a terminal disclaimer in compliance with 37 CFR § 1.130(c) and (b) and a "Statement Concerning Common Ownership" are appended.

As such, it is believed that the Examiner's rejection on obviousness-type double patenting grounds is overcome. Accordingly, withdrawal of the Examiner's rejection of claims 1-5, 10-17, and 19-22 on those bases is respectfully requested.

The Examiner rejected claims 1-5, 10-17, and 19-22 under 35 U.S.C. § 103(a) as being obvious over claims 1-29 of Lentz. The Examiner also rejected claims 6-9, 18, and 23 under 35 U.S.C. § 103(a) as being obvious over claims 1-29 of Lentz in view of Ben-Aissa. With this Response, a "Statement Concerning Common Ownership" is included which evidences that the subject matter of the Lentz reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person in order to claim the benefit of 35 U.S.C. § 103(c).

As such, the Examiner's grounds for rejecting claims 1-23 are overcome, as the Lentz reference is disqualified as prior art. Accordingly, the Examiner's rejection of claims 1-23 is traversed, and withdrawal of their rejection is respectfully requested. In accordance with the above discussion, allowance of claims 1-23 is respectfully requested.

CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 1-23 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1-23 is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Respectfully submitted,

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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 5th day of **August, 2004**.

By_____
Name: **Timothy A. Czaja**